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No. 92-1655

In The

Supreme Court of the United States

October Term, 1992

DISTRICT OF COLUMBIA,

Petitioner,

vs.

THOMAS T. HANSFORD, SR. AND
MARY DELL HANSFORD,

Respondents.

Petition For A Writ Of Certiorari
To The Maryland Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a state's courts may exercise *in personam* jurisdiction in a tort suit against the District of Columbia, a non-resident municipal corporation that maintains a full time presence on a Federal enclave within the geographic boundaries of that State and that commits a tort on that enclave causing injury within the State?

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In June, 1987, Carl Sewanti Richardson ("Richardson") escaped for the second time from Oak Hill, the District of Columbia's maximum security facility for its most violent and dangerous juvenile delinquents. The Oak Hill facility is located in Laurel, Maryland, on land that the petitioner alleges is a "Federal enclave".[1] At the

[1] Although petitioner contends that the land on which Oak Hill is located is, in fact, a federal enclave, there is no record support for its contention. Indeed, *after* the June 14, 1990, oral argument before the Maryland Court of Special Appeals,

time of his June, 1987, escape, Richardson had demonstrated his violent propensities by his eleven (11) prior criminal adjudications, as well as his ability to escape previously from this same facility. On August 16, 1987, at 1:00 a.m., Thomas T. Hansford, Jr., the respondents' 21-year-old child, was murdered in Prince George's County, Maryland, by Richardson and another. The respondents resided with their son in Prince George's County, at a location close to their son's homicide.

On August 3, 1988, Richardson was convicted of the felony murder of Thomas T. Hansford, Jr. in the Circuit Court for Prince George's County. Pet. App. @ 1a.[2]

On August 15, 1988, the respondents filed their lawsuit in the Prince George's County Circuit Court against Richardson, petitioner and petitioner's employee, J.E. Neil Ollivierra ("Ollivierra"), who was, at the time of Richardson's June, 1987 escape, in charge of the Oak Hill facility. Pet. App. @ 1a-2a. Although respondents allege a variety of different legal theories in their complaint, the essence of their claims is that petitioner and Ollivierra were negligent in their operation of the Laurel prison due to their failure to maintain custody and control of Richardson, who they knew or should have known had a prior record of both violent crimes and a successful escape from this very location. Moreover, respondents

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petitioner's motion to supplement the record by including a copy of the purported deed to the Oak Hill property was denied.

[2] Respondents rely on the petitioner's appendix as contained in its Petition and will refer to particular pages by "Pet. App @ ___".

contend that petitioner and Ollivierra were negligent for their failure to either recapture Richardson or to provide any warning of his escape and dangerous status to the surrounding Maryland communities. Furthermore, respondents contend that petitioner had a custom or policy at the time of Richardson's second escape as a result of which one of every three delinquents was permitted to be missing from the Oak Hill facility. Pet. App. @ 2a.

On September 8, 1989, after petitioner filed its answer, a Prince George's County Circuit Judge heard argument on, and granted in part, petitioner's motion to dismiss the complaint. This ruling was limited only to the District of Columbia. The motion was denied as to Ollivierra. The principal basis for petitioner's motion to dismiss in the trial court was that Maryland courts had no *jurisdiction* over a foreign municipal corporation. Petitioner relied exclusively on *Phillips v. Baltimore*, 110 Md. 431, 72 A. 902 (1909). The trial court based its dismissal of the petitioner solely on the *Phillips* case, which involved venue, not jurisdiction, principles and the construction of a venue statute. There was no consideration of, or ruling on, any federal or constitutional contention by the trial court since none had been raised by the petitioner. Petitioner also moved to dismiss on the grounds of insufficiency of pleading, proximate cause and failure to state a claim under 42 U.S.C. § 1983. All of these arguments were denied summarily by the trial judge. Pet. App. @ 4a.

On appeal by respondents to the Maryland Court of Special Appeals, petitioner for the first time raised its claim that Maryland courts could not exercise *in personam* jurisdiction over it due to Maryland's cession of the Oak Hill land to the United States before 1943. Pet. App. @ 5a.

As support for this contention, petitioner relied on § 14-102(b) of the State Government Article of the Maryland Code (1984, 1992 Cum. Supp.) (Maryland *legislative* jurisdiction over previously ceded land to United States), not on Article I, Section 8, Clause 17 of the United States Constitution. Pet. App. @ 6a; 6b-7b. In upholding the trial court's dismissal of the claims against petitioner, the Court of Special Appeals ruled that there was a conflict between two (2) Maryland statutes (State Government Article § 14-102(b) and Courts and Judicial Proceedings Article § 6-101, et seq., the Maryland "Long-Arm" statute) and that as a result, Maryland courts could not exercise jurisdiction over the District of Columbia where its negligence occurred on an enclave located in Maryland that was ceded before 1943. Pet. App. @ 7b. As in the trial court, the Federal Constitutional claim now raised by petitioner was neither pursued before, nor ruled upon by, the Maryland Court of Special Appeals.

The respondents' petition for a writ of certiorari to the Maryland Court of Appeals was granted. 321 Md. 709, 584 A.2d 708 (1991). The writ was issued to review the following relevant issues: 1) whether the trial court erred in holding that the District, as a municipal corporation, could not be sued outside of the jurisdiction in which it is located; and 2) whether the Court of Special Appeals erroneously affirmed the trial court's dismissal of the complaint against the District on the ground that the trial court could not exercise jurisdiction where the District's alleged tortious conduct occurred on a federal enclave ceded prior to 1943. Pet. App. @ 6a.

The Maryland Court of Appeals reversed the Court of Special Appeals by ruling that there was, in fact, no

actual conflict between the state's *legislative* jurisdiction statute, as detailed in the State Government Article § 14-102(b), and its "Long-Arm" jurisdiction statute, Courts and Judicial Proceedings Article § 6-101, et seq. when considering the issue of *in personam* jurisdiction over petitioner. Pet. App. @ 13a-14a. After holding that the two (2) state statutes can be construed harmoniously, the Court ruled that respondents may pursue their tort claims against petitioner in Maryland State Courts. The Court reasoned that *in personam* jurisdiction over petitioner exists due to petitioner's conduct of business in Maryland, its use of real property in Maryland and, arguably, its tortious causation of injury in Maryland. Pet. App. @ 14a-15a, n.7. The Court did *not* rule that either Maryland statute was in conflict with any constitutional right, title or interest the protection of which petitioner attempted to seek. Pet. App. @ 20a-22a.

REASONS WHY THE PETITION SHOULD BE DENIED

It has long been settled that a state's courts may exercise their judicial jurisdiction over all manner of activities occurring within the state's boundaries, regardless of whether those activities occur on federal enclaves or whether they involve out-of-state municipalities, counties or, indeed, other states. The District of Columbia asks this Court to create an exception to this universal rule just for itself, on the *sole* basis that it is, in effect, the same as the federal government. Moreover, the District of Columbia claims that, without such a unique exception, a state's exercise of jurisdiction over it would interfere impermissibly with the activities of the federal government to a

constitutionally significant degree. The District's fanciful argument has no basis in the decisions of *any* court.

This case presents *no* constitutional issue that was pressed by petitioner and passed upon by the trial court or the intermediate Maryland appellate court.[3] See, *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181, n. 3 (1983); *Beck v. Washington*, 369 U.S. 541, 549-550 (1962); but see, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Street v. New York*, 394 U.S. 576 (1969). Although petitioner raised its Article I, Section 8, Clause 17 claim before the Maryland Court of Appeals, it was *not* passed upon by that court. As such, the advisory opinion sought by petitioner from this Court is unwarranted. Rather, the decision from which petitioner now seeks review involved the Maryland Court of Appeal's harmonious construction of two (2) state statutes. Moreover, the decision below does *not* conflict with any decision by any other court requiring reconciliation by Supreme Court review. Furthermore, this case does *not* involve an issue of widespread importance or application which will, if unreviewed here, open the floodgates of litigation against petitioner. As petitioner noted, this case presents the first occasion in seventy years where private claims involving Oak Hill have been pursued against the District of Columbia in Maryland state courts. Pet. @ 7. If petitioner's "floodgate" claim had *any* merit, the issues involved here would have

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[3] Contrary to the provisions of Supreme Court Rule 29.4(c), petitioner has not recited in its initial pleading that it has served notice on the attorney general of Maryland of its claim challenging the constitutionality of the applicable Maryland statutes.

been pressed repeatedly by others, and resolved, before now.

Finally, but most importantly, the decision below was a correct one, construing as it did the application of the Maryland "long-arm" jurisdiction statute and the availability of a state's *judicial*, rather than its legislative, jurisdiction over wrongful death and related claims. Indeed, the ability of one state's judiciary to provide a forum for civil claims against another state has been previously upheld. *Nevada v. Hall*, 440 U.S. 410 (1979). Petitioner fails to offer *any* reason why, as a municipal corporation, it is entitled to receive *greater* immunity than that afforded to a state. Contrary to the contention of petitioner that the maintenance of respondents' lawsuit will interfere with its governmental functions, no interference at all will result from the orderly use of a judicial forum where respondents present evidence to prove petitioner's liability. Petitioner then has all the rights of any other litigant, whether individual or governmental.

A. A STATE MAY EXERCISE ITS JUDICIAL JURISDICTION BY PERMITTING ITS CITIZENS TO MAINTAIN A LAWSUIT IN ITS OWN COURTS AGAINST A MUNICIPAL CORPORATION LOCATED ON A FEDERAL ENCLAVE WITHIN THAT STATE'S BOUNDARIES WITHOUT ANY UNCONSTITUTIONAL INTERFERENCE IN THAT CORPORATION'S ACTIVITIES.

The issue of whether a state may exercise its jurisdiction over activities that occur on, and people who reside on, federal enclaves within the state has been raised and resolved by this Court and others in a number of different

contexts. For instance, more than 100 years ago this Court ruled that a state-imposed tax on property located on a federal enclave was not invalid since there was no interference by imposition and collection of that tax with the operations of the federal government, even though acquisition of the enclave, the situs of the tax imposed, had been obtained under Article I, Section 8 of the Constitution. *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525 (1885). By its express terms, this constitutional provision gives Congress authority to exercise "exclusive legislation" over such land. Nevertheless, the state in which an enclave was physically located was not deprived of its non-legislative jurisdiction over that same land unless it attempted to interfere with federal operations thereon. *Id.*, at 533-534.

Similarly, a foreign private corporation doing commercial business on a federal enclave is subject to a state court's jurisdiction for injuries occurring in the course of its business on that enclave despite its claims that it is not "doing business" within the judicial jurisdiction of the state. *Knott Corp. v. Furman*, 163 F.2d 199, 206 (4th Cir.), *cert. denied*, 322 U.S. 809 (1947). Maintaining such a personal injury lawsuit in the state's courts in no way unconstitutionally "interferes" with the operation of the Federal government on that enclave.

Additionally, a city may enact legislation imposing a tax on income for work performed on a federal enclave, even though the United States had acquired "exclusive jurisdiction" of the area, so long as the tax does not interfere with the enclave's activities. *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624, 626 (1953). Certainly, the imposition of a tax, by either

local or state government, is burdensome conduct as to those who must pay it. By contrast, use of a state's court system by private parties can impose no *greater* burden than imposition of a tax and, indeed, respondents suggest, a far lesser burden is imposed by the exercise of judicial jurisdiction.

Enclave residents are part of the state community. They do not lose their state-created rights as citizens of the state in which the enclave is located simply because of where they live. Thus, this Court invalidated a Maryland statute prohibiting enclave residents from voting in Maryland elections as a denial of their equal protection rights. *Evans v. Cornman*, 398 U.S. 419 (1970). Residents at the National Institutes of Health ("NIH") had been denied the right to vote in Maryland elections since they were considered not to be residents of Maryland while living on an enclave created under the authority of Article I, Section 8, Clause 17, and Congress possessed "exclusive federal jurisdiction" over such enclaves. However, this Court noted that enclave residents " . . . clearly live within the geographical boundaries of the State of Maryland. . . . " since enclaves even after creation remain part of their surrounding state, relying on its previous rejection of the "fiction of a state within a state". *Id.* at 421-422, citing *Howard v. Commissioners of Louisville, supra,* at 627. Clearly, if an enclave resident is a state resident such that he or she may vote in state elections, is obligated to pay state taxes, is entitled to use the state's educational system and is subject to state process and the jurisdiction of state courts, that state's courts must have personal jurisdiction over persons and activities on an enclave. This is precisely the ruling of the Maryland

Court of Appeals in this case, and is consistent with *Evans, supra,* and *Howard, supra.* Pet. App. @ 17a-20a. In order for petitioner to prevail here, this Court's long standing prior decisions concerning the rights and responsibilities of enclave residents would need to be overruled as wrongly decided. Respondents submit they were not.

In a case not involving a Federal enclave, this Court has held that a state's constitutional claim of sovereign immunity from suit in its own courts presents no bar to suit in the courts of other states. Consistent with due process considerations, a state not only has *judicial* jurisdiction over individuals and businesses operating within its geographic borders, but also has the constitutional ability to exercise *in personam* jurisdiction over another sovereign state. In *Nevada v. Hall,* 440 U.S. 410 (1979), plaintiffs, California residents, sustained personal injuries in the State of California due to the negligent operation of a vehicle by a Nevada state employee. Nevada, when sued in California, claimed that it was immune from liability in California's courts, that its own immunity under Nevada law was entitled to full faith and credit by the California courts and that, in any event, as a matter of comity, Nevada should be able to avoid liability for the plaintiffs' injuries in California. This Court ruled against Nevada on all issues and upheld a significant plaintiffs' verdict. *Id.,* at 426-427.

It is without question that, if one *state* is not constitutionally required to accept a sister state's claim of sovereign immunity, a municipal corporation, even the District of Columbia, is not entitled to any *greater* consideration. Indeed, petitioner fails to provide any basis why it alone

should receive such unique immunity, despite its reliance on Article I, Section 8, Clause 17. This Constitutional provision, by its terms and as construed, permitted acquisition of ten (10) square miles of land to create a separate District of Columbia as a location where the nascent Federal Government would be physically protected from outside interference, particularly if host or neighboring states were incapable of guaranteeing the Government's safety. *Fort Leavenworth R.R. Co. v. Lowe, supra,* @ 529-531. To rely on this same constitutional provision as a bar to the maintenance of a personal injury lawsuit in Maryland courts based upon the District's negligent operation of its Maryland-based prison for juvenile delinquents is simply to ignore what the provision says, what it has been construed to mean and why it was deemed necessary in the first instance more than 200 years ago. The orderly use of a state's courts to litigate claims against the District in no way unconstitutionally "interferes" with the District's function as the seat of the national government or with its own municipal prison functions.

In light of a more recent case on the question of sovereign immunity, and specifically involving the metropolitan area jurisdictions of Virginia and the District of Columbia, *Biscoe v. Arlington County,* 238 U.S. App. D.C. 206, 738 F.2d 1352 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1159 (1985), the petitioner's contentions are further weakened. The applicability of sovereign immunity was rejected when a Virginia county was sued for personal injuries in the District of Columbia. Arlington County, Virginia, the defendant, claimed that sovereign immunity barred liability in the District of Columbia courts, that the Full Faith and Credit Clause, U.S. Constitution, Article IV,

Section 1, compelled application of Virginia's immunity law, and that comity principles required the District of Columbia to recognize Virginia's immunity. The United States Court of Appeals for the District of Columbia Circuit rejected all of these contentions, partly on the basis of *Nevada v. Hall, supra.* In evaluating the comity issue, the Circuit Court commented on the District's greater policy interest of not limiting compensation to injured persons, as would be the case if Virginia's immunity were invoked, by recognizing " . . . the special and largely unique interests of the District in *protecting persons* who live in the surrounding suburbs and work in the District. . . . " *Id.*, 738 F.2d at 1361, (emphasis added). Indeed, the *Biscoe* court noted the inequity of limiting a compensatory policy to the physical confines of the District itself by stating,

> [T]o confine the benefits of the . . . rule to the territory ceded by the States of Maryland and Virginia to form the Nation's Capital would be to shun the present reality of the economically and socially integrated greater Metropolitan area. It is commonplace that residents of Maryland are part of the Washington Metropolitan trading area, and that District residents and businesses have an interest in the well-being of these citizens of the Free State. *Id.*

Similarly, other jurisdictions have permitted civil litigation similar to this case where parties were injured as a result of another sovereign's negligence with regard to criminals. In *Peterson v. Texas,* 635 P.2d 241 (Colo.App. 1981), a Colorado State motor vehicle owner sued the

State of Texas for negligence in its supervision of juveniles who were participating in a Texas sponsored rehabilitation program located in Colorado. Colorado's highest court did not recognize Texas' claims of sovereign immunity in a civil damage action brought in Colorado courts for a car stolen by a Texas juvenile while he was in the Colorado rehabilitation program, relying on *Nevada v. Hall, supra.*

To the same effect was a case where Nevada refused to honor Wisconsin's claim of sovereign immunity in *Mainecki v. Second Judicial Dist. Court,* 658 P. 2d 422, *cert. dismissed,* 464 U.S. 806 (1983). A Wisconsin sex offender, while on probation, relocated to Nevada with his probation officer's permission. The sex offender moved in with the plaintiffs, a family with a minor son. Wisconsin authorities failed to warn the plaintiffs about the sex offender who ultimately victimized the minor son. The plaintiffs sued both Wisconsin and the probation officer for their failure to warn them about the sex offender and their failure to properly maintain and supervise his activities. In the face of challenges similar to those raised in *Nevada v. Hall, supra,* and *Biscoe v. Arlington County, supra,* Nevada refused to recognize any form of immunity claimed by its sister state, but proceeded to exercise its jurisdiction over another sovereign.

Petitioner's position here is one which completely ignores the rationale for protection of Maryland residents as stated in *Biscoe,* as well as the factors analyzed in *Peterson, supra,* and *Mainecki, supra,* in addition to those cases decided by this Court. In sum, whether a civil claim in a state court is based on its own legislative enactments, such as its taxing power, or on its judicial ability to

provide a forum for private parties to resolve private disputes, states may exercise jurisdiction over persons and activities on federal enclaves so long as that jurisdiction does not impair the federal government's prerogatives.

B. "EXCLUSIVE JURISDICTION" ENCOMPASSES ONLY EXCLUSIVE LEGISLATIVE AUTHORITY OVER A PARTICULAR AREA AND DOES NOT LIMIT A STATE'S JUDICIAL JURISDICTION TO PROVIDE ITS COURTS AS A FORUM FOR THE RESOLUTION OF VARIOUS LOCAL DISPUTES WHICH OCCUR OR INVOLVE PARTIES LOCATED ON FEDERAL ENCLAVES.

Despite petitioner's attempts to generalize that its oft-repeated phrase of "exclusive jurisdiction" means exclusive political, legislation and *judicial* jurisdiction belonging to the federal government over the Oak Hill enclave, and thus barring this litigation, a state may constitutionally still maintain its *judicial* jurisdiction over federal property. This Court has previously ruled, albeit in the context of subject matter, rather than personal, jurisdiction, that traditional cases involving state law, even arising from activities on federal enclaves, should be decided by state courts:

> The factors generally recommending exclusive federal-court jurisdiction over an area of federal law include the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims. These

> factors cannot support exclusive federal jurisdiction over claims whose government rules are borrowed from state law.

Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 482 (1981). See also, 16 U.S.C. § 457, which provides that

> [i]n the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be;. . . .

" 'Nothing inherent in exclusive federal sovereignty over a territory precludes a State Court from entertaining a personal injury suit concerning events occurring in the territory and governed by the federal government.' " *In re Air Crash Disaster at Gander, Newfoundland*, 660 F. Supp. 1202, 1207 (W.D. KY. 1987), quoting *Gulf Offshore Co., supra*, @ 482. See also, *Ohio River Contract Co. v. Gordon*, 244 U.S. 68 (1917) (an action for personal injury suffered on a reservation under the exclusive jurisdiction of the United States may be maintained in a state court which has personal jurisdiction over the defendant). As this Court noted in *Gulf Offshore Co., supra*, @ 483, petitioner's argument " . . . confuse[d] the political jurisdiction of a State with its *judicial jurisdiction*." (emphasis added).

The Maryland Legislature, consistent with this Court's prior rulings, and unlike petitioner, did not confuse its political and judicial functions when it enacted its "Long-Arm" statute. By express statutory terms, Maryland has designed its "Long-Arm" *in personam*, judicial

jurisdiction to include federal enclaves and the statute is intended to " . . . extend the personal jurisdiction and venue of courts of the State and the power to serve process of those courts to any person on federal enclaves, reservations or lands within the State to the fullest extent permitted by the Constitution and laws of the United States." Maryland Code (1989) Courts and Judicial Proceedings Article § 6-102(e).

In its ruling below, the Maryland Court of Appeals held that there was no "conflict" between two (2) state statutes, one of which deals with the legislative authority of Maryland over federal enclaves and the other of which confers "Long-Arm" jurisdiction. Moreover, the ruling determined that there was no limitation of *in personam* jurisdiction of Maryland courts over parties regardless of the situs of the dispute. The Court of Appeals decision recognized the clear dichotomy between a state's executive or legislative jurisdiction on one hand and its judicial jurisdiction on the other. *Hansford v. District of Columbia*, 329 Md. 112, 120, 617 A.2d 1057, 1065 (Md. 1993); Pet. App. @ 15a-16a. As the Court stated, "[t]he District's argument, and the position of the Court of Special Appeals, 'confuses the political jurisdiction of a States with its judicial jurisdiction.' *Gulf Offshore v. Mobil Oil Corp.*, 453 U.S. 473, 482 (1981)." Respondents submit that it is now time for recognition of that distinction by petitioner.

Petitioner claims that permitting respondents' case to go to trial will, somehow, interfere with "its discretionary actions in rehabilitating children and youths. . . . " Pet. @ 8. Moreover, petitioner tries to bootstrap its position by raising the specter of more horrible "interference" in its

Virginia prison operations, which are larger than those in Maryland. Pet. @ 9.

In light of all prior judicial decisions involving the scope of permissible state or local governmental acts on and over federal enclaves, petitioner necessarily must *claim* some type of "interference" with its activities in order to create a "constitutional" issue in this case. As even a cursory reading of the decision by the Maryland Court of Appeals discloses, none of petitioner's constitutional interests has been deprived by the maintenance of this lawsuit. Moreover, the facts of this case belie all such claimed "interference" unless a basic fallacy in petitioner's argument is accepted. That fallacy is simple: it must be assumed that a juvenile delinquent, who has been sent to the Oak Hill facility, is at some time *permitted to escape from that facility* by its professional staff as part of a considered and discretionary rehabilitative program for that person. Such a proposition is self-evidently absurd. If such an escape is *not* assumed to be part of an inmate's rehabilitation program, allowing the maintenance of this lawsuit based on the District's negligence in failing to maintain custody of Richardson and further failing to regain custody of him after his successful escape, in no way "interferes" with the District's rehabilitation of juveniles at Oak Hill. Liability attaches, and the District is subject to defend itself, only when its negligence in not maintaining absolute custody and control of a dangerous person produces a legally cognizable injury. Unless there is unconstitutional "interference", Maryland courts may exercise jurisdiction over the District based on its Oak Hill operations, even though on a federal enclave, because there is no *conflict* between the

state's acts and those District of Columbia activities occurring on the enclave. Hence, absent petitioner's "interference" contention, there can be no conflict here sufficient to preclude Maryland courts from providing a forum for respondents to present their tort claims. Thus, there is no constitutional issue to warrant granting the petition.

C. THE DISTRICT OF COLUMBIA, BY ITS OPERATION OF A PRISON IN MARYLAND, IS NOT OPERATING AS THE FEDERAL GOVERNMENT, NOR CARRYING OUT ANY NATIONAL PURPOSE AND, THEREFORE, IS NOT ENTITLED TO ANY IMMUNITY WHICH MAY BE APPLICABLE TO THE FEDERAL GOVERNMENT.

The District of Columbia contends in its petition that, due to its operation of the Oak Hill prison, it is entitled to the same immunity as if it were the federal government and, therefore, is not subject to tort claims in Maryland's courts. Pet. @ 12-17. Indeed, as noted, *supra*, the District here claims *greater* protection from tort claims in Maryland courts than has been accorded when raised by *states*. Contrary to its claims here, the District of Columbia as a municipal corporation, D.C. Code § 1-102(a), does *not* possess immunity greater than a city. Rather, it may sue " . . . and be sued. . . . " just as any other entity and is subject to the same rules that govern procedures between private parties. *Id; Metropo'.tan R.R. v. District of Columbia*, 132 U.S. 1 (1889). Indeed, the District, as a municipal corporation, is responsible for the negligence of its officers having the care of its streets and sidewalks. *District of Columbia v. Woodbury*, 136 U.S. 450 (1890). Additionally,

the District is liable for the intentional torts of its employees since its immunity is based on the common law immunity for municipal governments, not on any sovereignty of the United States government nor upon limits co-extensive with the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq. *Wade v. District of Columbia*, 310 A.2d 857, 861 (D.C. 1973) ("When a tort is made possible only through the abuse of power granted by the government, then the government should be held accountable for the abuse, whether it is negligent or intentional in character."); *Cannon v. United States*, 645 F.2d 1128, 207 U.S. App. D.C. 203 (D.C. Cir. 1981) (Lorton Reformatory of the District of Columbia, located in Virginia, is not subject to any greater control by the federal government than any other District facility or agency and, therefore, is not a federal agency for purposes of Federal Tort Claims Act or 28 U.S.C. § 1346(b)).

While administration of a state law may not interfere with the execution of a national purpose, difficulty occurs only where there is a precise conflict between state and federal rights. In such instances, the supremacy of federal rights supersedes conflicting state rights. *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 103-104 (1940). However, without any actual conflict, or as the District characterizes it, "interference", there is no bar to enforcement of the state's rights. Here, the District, by its operation of a prison, is not the United States, *Cannon v. United States, supra*, and is carrying out *no* national purpose. As recognized by the Maryland Court of Appeals below, the District is not entitled to immunity here on the basis of the Supremacy Clause or cases interpreting it. *Hansford v. District of Columbia, supra*, @ 1067-1068; Pet. App. @

20a-21a. Therefore, this last contention provides no better basis for granting the petition than do those addressed above.

CONCLUSION

Because the Maryland Court of Appeals ruling correctly construed two (2) state statutes concerning the "Long-Arm" *in personam* jurisdiction of its own courts, petitioner was deprived of no constitutional interest and this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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